

CHAPTER 4.0 STATE AGENCY COMMENTS AND RESPONSES

4.1 FORMAT OF COMMENTS AND RESPONSES AND LIST OF COMMENTERS

This chapter contains copies of the comment letters received from State government agencies, including the State Assembly, listed in Table 4.1-1. Each letter is followed by responses to the comments presented in that letter. Responses to comments are numbered individually in sequence, corresponding to the numbering assigned to comments in each comment letter.

**Table 4.1-1. State agency comments received on the Oroville Facilities
Relicensing Draft Environmental Impact Report.**

Code	Agency	Name
S0001	California Department of Water Resources	Christopher Huitt
S0002	Governor's Office of Planning and Research	Scott Morgan
S0003	California Department of Water Resources	Christopher Huitt
S0004	Assembly, California Legislature	Rick Keene
S0005	California Department of Transportation	Sukhvinder (Sue) Takhar
S0006	Governor's Office of Planning and Research, State Clearinghouse	Terry Roberts
S0007	State Water Resources Control Board	Russ Kanz

4.2 COMMENTS AND RESPONSES

Comment letters and responses to comments from State government agencies can be found beginning on page 4-3.

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COMMENT FROM THE DWR FLOODWAY PROTECTION SECTION

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



June 4, 2007

Henry "Rick" Ramirez
California Department of Water Resources
Post Office Box 942836
Sacramento, California 94236

Oroville Facilities Relicensing FERC Project No. 2100
State Clearinghouse (SCH) Number: 2001102011

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted flood control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

2007 JUN -6 PM 1:32
S0001-1

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Huit'.

Christopher Huit
Staff Environmental Scientist
Floodway Protection Section

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

Encroachment Permits Fact Sheet

Basis for Authority

State law (Water Code Sections 8534, 8608, 8609, and 8710 – 8723) tasks the Reclamation Board with enforcing appropriate standards for the construction, maintenance, and protection of adopted flood control plans. Regulations implementing these directives are found in California Code of Regulations (CCR) Title 23, Division 1.

Area of Reclamation Board Jurisdiction

The adopted plan of flood control under the jurisdiction and authority of the Reclamation Board includes the Sacramento and San Joaquin Rivers and their tributaries and distributaries and the designated floodways.

Streams regulated by the Reclamation Board can be found in Title 23 Section 112. Information on designated floodways can be found on the Reclamation Board's website at http://recbd.ca.gov/designated_floodway/ and CCR Title 23 Sections 101 - 107.

Regulatory Process

The Reclamation Board ensures the integrity of the flood control system through a permit process (Water Code Section 8710). A permit must be obtained prior to initiating any activity, including excavation and construction, removal or planting of landscaping within floodways, levees, and 10 feet landward of the landside levee toes. Additionally, activities located outside of the adopted plan of flood control but which may foreseeable interfere with the functioning or operation of the plan of flood control is also subject to a permit of the Reclamation Board.

Details regarding the permitting process and the regulations can be found on the Reclamation Board's website at <http://recbd.ca.gov/> under "Frequently Asked Questions" and "Regulations," respectively. The application form and the accompanying environmental questionnaire can be found on the Reclamation Board's website at <http://recbd.ca.gov/forms.cfm>.

Application Review Process

Applications when deemed complete will undergo technical and environmental review by Reclamation Board and/or Department of Water Resources staff.

Technical Review

A technical review is conducted of the application to ensure consistency with the regulatory standards designed to ensure the function and structural integrity of the adopted plan of flood control for the protection of public welfare and safety. Standards and permitted uses of designated floodways are found in CCR Title 23 Sections 107 and Article 8 (Sections 111 to 137). The permit contains 12 standard conditions and additional special conditions may be placed on the permit as the situation warrants. Special conditions, for example, may include mitigation for the hydraulic impacts of the project by reducing or eliminating the additional flood risk to third parties that may caused by the project.

Additional information may be requested in support of the technical review of

your application pursuant to CCR Title 23 Section 8(b)(4). This information may include but not limited to geotechnical exploration, soil testing, hydraulic or sediment transport studies, and other analyses may be required at any time prior to a determination on the application.

Environmental Review

A determination on an encroachment application is a discretionary action by the Reclamation Board and its staff and subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.). Additional environmental considerations are placed on the issuance of the encroachment permit by Water Code Section 8608 and the corresponding implementing regulations (California Code of Regulations – CCR Title 23 Sections 10 and 16).

In most cases, the Reclamation Board will be assuming the role of a "responsible agency" within the meaning of CEQA. In these situations, the application must include a certified CEQA document by the "lead agency" [CCR Title 23 Section 8(b)(2)]. We emphasize that such a document must include within its project description and environmental assessment of the activities for which are being considered under the permit.

Encroachment applications will also undergo a review by an interagency Environmental Review Committee (ERC) pursuant to CCR Title 23 Section 10. Review of your application will be facilitated by providing as much additional environmental information as pertinent and available to the applicant at the time of submission of the encroachment application.

These additional documentations may include the following documentation:

- California Department of Fish and Game Streambed Alteration Notification (<http://www.dfg.ca.gov/1600/>),
- Clean Water Act Section 404 applications, and Rivers and Harbors Section 10 application (US Army Corp of Engineers),
- Clean Water Act Section 401 Water Quality Certification, and
- corresponding determinations by the respective regulatory agencies to the aforementioned applications, including Biological Opinions, if available at the time of submission of your application.

The submission of this information, if pertinent to your application, will expedite review and prevent overlapping requirements. This information should be made available as a supplement to your application as it becomes available. Transmittal information should reference the application number provided by the Reclamation Board.

In some limited situations, such as for minor projects, there may be no other agency with approval authority over the project, other than the encroachment permit by Reclamation Board. In these limited instances, the Reclamation Board

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may choose to serve as the "lead agency" within the meaning of CEQA and in most cases the projects are of such a nature that a categorical or statutory exemption will apply. The Reclamation Board cannot invest staff resources to prepare complex environmental documentation.

Additional information may be requested in support of the environmental review of your application pursuant to CCR Title 23 Section 8(b)(4). This information may include biological surveys or other environmental surveys and may be required at anytime prior to a determination on the application.

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RESPONSE TO COMMENT FROM THE DWR FLOODWAY PROTECTION SECTION

Response S0001-1:

DWR does not need to obtain an encroachment permit from the Reclamation Board (known since January 1, 2008, as the Central Valley Flood Protection Board) for the Proposed Project. Pursuant to Water Code Section 8536, the board “has no power, jurisdiction, authority, or control over the construction, operation, or maintenance of the Central Valley Project or any part of it.”

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**COMMENT FROM THE GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
STATE CLEARINGHOUSE**



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

Memorandum

Date: June 18, 2007
To: All Reviewing Agencies
From: Scott Morgan, Senior Planner
Re: SCH # 2001102011
Oroville Facilities Relicensing (Federal Energy Regulatory Commission
Project No. 2100)

Pursuant to the attached letter, the Lead Agency has extended the review period for the
above referenced project to August 20, 2007 to accommodate the review process. All
other project information remains the same.

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S0002-1

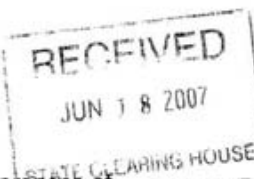
cc: Henry Ramirez
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

AMENDED
**Notice of Completion and Availability of the Draft Environmental
Impact Report and Notice of Public Meeting for Relicensing of
the Oroville Facilities, FERC Project No. 2100**

California Department of Water Resources

To Responsible Agencies and Interested Parties:

The California Department of Water Resources (DWR) is in the process of seeking a new 50 year license from the Federal Energy Regulatory Commission (FERC) to operate the existing Oroville Facilities. DWR has made available for public review and comment the Draft Environmental Impact Report (Draft EIR) for the Oroville Facilities Relicensing, FERC Project No. 2100. The State Clearinghouse Number for this EIR is: **SCH 2001102011**



Extension of Public Comment Review Period

The initial Notice for the availability of the DEIR, issued May 21, 2007, specified a 60 day comment period beginning on May 21, 2007 and ending on July 20, 2007. A request was made by the County of Butte to extend the comment period by an additional 30 days to conclude the comment period on August 20, 2007.

For good cause, DWR has elected to grant this request and hereby notifies all responsible agencies and interested parties of August 20, 2007 as the new comment period deadline.

All other information contained within the initial notice remains unchanged by this extended comment review period.

Henry M. Ramirez, Manager
Oroville Facilities Relicensing Program

Henry M. Ramirez
June 15, 2007

Barbara McDonnell, Chief
Division of Environmental Services

Barbara McDonnell
June 15, 2007

2007 JUN 22 PM 1:33

Form A
Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, PO Box 3044, Sacramento, CA 95812-3044 916/445-0613

Project Title: Oroville Facilities Relicensing FERC Project No. 2100

Lead Agency: California Department of Water Resources

Mailing Address: P.O. Box 942836

City: Sacramento

Zip: 94236

County: Sacramento

Project Location:

County: Butte

City/Town/Community: Oroville

Cross Street:

Assessor's Parcel No.: N/A

Section: Twp. 18N-22N

Range: 20E

Within 1 Mile: State Hwy #: 20152-99

Waterways: Lake Oroville/Feather River

Airports: Oroville Municipal

Railways: Western Pacific

Schools:

Document Type:

CEQA: ☐ NOP ☐ Supplemental/Subsequent EIR ☐ NEPA: ☐ NOI ☐ Other: ☐ Joint Document

☐ Early Cons ☐ (Prior SCH No.) ☐ EA ☐ Final Document

☐ Neg Det ☐ Other ☐ Draft EIS ☐ FONSI

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Rezone ☐ Annexation

☐ General Plan Amendment ☐ Master Plan ☐ Precise ☐ Redevelopment

☐ General Plan Element ☐ Planned Unit Development ☐ Use Permit ☐ Coastal Permit

☐ Community Plan ☐ Set Plan ☐ Land Division (Subdivision, etc.) ☒ Other Hydro Relicensing

Development Type:

☐ Residential: Units _____ Acres _____

☐ Office: Sq. Ft. _____ Acres _____ Employees _____

☐ Commercial: Sq. Ft. _____ Acres _____ Employees _____

☐ Industrial: Sq. Ft. _____ Acres _____ Employees _____

☐ Educational

☒ Recreational: Campgrounds, trails, day use improvements

☐ Water Facilities: Type _____ MGD _____

☐ Transportation: Type _____

☐ Mining: Mineral _____

☐ Power: Type _____ Watts _____

☐ Waste Treatment: Type _____

☐ Hazardous Waste: Type _____

☐ Other: Environmental Enhancements

Funding (approx.): Federal \$ _____ State \$ _____ Total \$ _____

Project Issues Discussed in Document:

☒ Aesthetic/Visual ☒ Flood Plain/Flooding ☐ Schools/Universities ☒ Water Quality

☒ Agricultural Land ☒ Forest Land/Fire Hazard ☐ Septic Systems ☒ Water Supply/Groundwater

☒ Air Quality ☒ Geologic/Seismic ☐ Sewer Capacity ☒ Wetland/Riparian

☒ Archeological/Historical ☐ Materials ☒ Soil Erosion/Compaction/Grading ☒ Wildlife

☐ Coastal Zone ☒ Noise ☒ Solid Waste ☒ Growth Inducing

☐ Drainage/Absorption ☒ Population/Housing Balance ☒ Toxic/Hazardous ☒ Landuse

☐ Economic/Jobs ☒ Public Services/Facilities ☒ Traffic/Circulation ☒ Cumulative Effects

☐ Fossil ☒ Recreation/Parks ☐ Vegetation ☐ Other _____

Present Land Use/Zoning/General Plan Designation:

Three primary land use designations in the Project Area include Public, Grazing and Open Land, and Timber Mountain land use.

Project Description:

The Oroville Facilities, as part of the SWP, are also operated for flood management, power generation, water quality improvement in the Sacramento-San Joaquin Delta, recreation, and fish and wildlife enhancements. The objective of the Proposed Project is the continued operation and maintenance of the Oroville Facilities for electric power generation, along with implementation of any terms and conditions to be considered for inclusion in a new FERC hydroelectric license. The initial FERC license for the Oroville Facilities, issued on February 11, 1957, expired on January 31, 2007. The Oroville Facilities are currently operating under an annual license issued by FERC effective February 1, 2007.

State Clearinghouse Contact: (916) 445-0613

State Review Began: 5-21-2007

SCH COMPLIANCE: 8-20-2007

Extended Per lead Agency

Please note State Clearinghouse Number (SCH#) on all Comments

SCH#: 2001102011

Please forward late comments directly to the Lead Agency

Project Sent to the following State Agencies

☒ Resources

☐ Boating & Waterways

☐ Coastal Comm

☐ Colorado Rvr Bd

☐ Conservation

☒ Fish & Game # 2

☐ Delta Protection Comm

☐ Forestry & Fire Prot

☒ Historic Preservation

☒ Parks & Rec

☐ Reclamation Board

☐ Bay Cons & Dev Comm

☐ DWR

☐ OES (Emergency Svcs)

☐ Bus Transp Hou

☒ Aeronautics

☒ CHP

☒ Caltrans # 3

State/Consumer Svcs

General Services

Cal EPA

ARB - Airport Projects

ARB - Transportation Projects

ARB - Major Industrial Projects

Integrated Waste Mgmt Bd

SWRCB: Clean Wtr Prog

SWRCB: Wtr Quality

SWRCB: Wtr Rights

☒ Reg. WQCB # 5P

☒ Toxic Sub Ctrl-CTC

Yth/Adlt Corrections

Corrections

Independent Comm

Energy Commission

NAMC

Public Utilities Comm

☒ State Lands Comm

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**RESPONSE TO COMMENT FROM THE GOVERNOR'S OFFICE OF PLANNING
AND RESEARCH, STATE CLEARINGHOUSE**

Response S0002-1:

Comment noted. DWR appreciates the comment period extension to August 20, 2007, for the DEIR.

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COMMENT FROM THE DWR FLOODWAY PROTECTION SECTION

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



June 20, 2007

Henry "Rick" Ramirez
California Department of Water Resources
Post Office Box 942836
Sacramento, California 95236

Oroville Facilities Relicensing FERC Project No. 2100
State Clearinghouse (SCH) Number: 2001102011

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S0003-1

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

A handwritten signature in black ink, appearing to read "CHUIT", written over a horizontal line.

Christopher Huit
Staff Environmental Scientist
Floodway Protection Section

cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

Encroachment Permits Fact Sheet

Basis for Authority

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- Clean Water Act Section 401 Water Quality Certification, and
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may choose to serve as the "lead agency" within the meaning of CEQA and in most cases the projects are of such a nature that a categorical or statutory exemption will apply. The Reclamation Board cannot invest staff resources to prepare complex environmental documentation.

Additional information may be requested in support of the environmental review of your application pursuant to CCR Title 23 Section 8(b)(4). This information may include biological surveys or other environmental surveys and may be required at anytime prior to a determination on the application.

2007 JUN 25 PM 1:41

RESPONSE TO COMMENT FROM THE DWR FLOODWAY PROTECTION SECTION

Response S0003-1:

This letter is a duplicate of Comment Letter S0001. Please see Response to Comment S0001-1.

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COMMENT FROM THE ASSEMBLY, CALIFORNIA LEGISLATURE

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0003
(916) 319-2003
FAX (916) 319-2103
DISTRICT OFFICE
1550 HUMBOLDT ROAD, SUITE 4
CHICO, CA 95928
(530) 895-4217
FAX (530) 895-4219
email:
assemblymember.keene@assembly.ca.gov



COMMITTEES:
VICE-CHAIR:
BUDGET
MEMBER:
NATURAL RESOURCES
UTILITIES AND COMMERCE
JOINT LEGISLATIVE BUDGET COMMITTEE
JOINT COMMITTEE ON EMERGENCY
SERVICES AND HOMELAND SECURITY

July 17, 2007

Henry M. Ramirez, Manager, Oroville Facilities Relicensing Program
California Department of Water Resources
1416 Ninth Street, Room 1155
Sacramento, CA. 95814

Dear Sir;

It has been brought to my attention that a public comment period is being held concerning the Lake Oroville Afterbay, a recreational waterway within my district. I have received a number of comments from the public concerning this waterway and have enclosed them for your use.

The Afterbay is an important source of economic health to its surrounding communities. Imposing a 5 mph speed limit on this waterway would most certainly be economically harmful to those communities. I do ask that this be taken into consideration in your decision-making process.

S0004-1

If you have any questions, please contact Steve Thompson in my District Office at 1550 Humboldt Rd. Ste. 4, Chico, CA 95928.

Thank you for your time and consideration of this matter.

Sincerely,

Rick Keene
Assemblyman, 3rd District
RK: st

2007 JUL 23 AM 8:53

Representing Butte, Lassen, Nevada, Placer, Plumas, Sierra and Yuba counties

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RESPONSE TO COMMENT FROM ASSEMBLYMEMBER KEENE

Response S0004-1:

An action taken by the California Fish and Game Commission at its August 10, 2007, meeting rescinded the existing 5 mph speed limit on over 80 percent of the Thermalito Afterbay. Enforcement of the existing 5 mph speed limit will continue on the portion of Thermalito Afterbay north of State Route (SR) 162. The impacts on recreationists, wildlife, and the economic health of the surrounding communities are less than significant.

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COMMENT FROM THE CALIFORNIA DEPARTMENT OF TRANSPORTATION

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
DISTRICT 3
703 B STREET
P. O. BOX 911
MARYSVILLE, CA 95901-0911
PHONE (530) 741-4025
FAX (530) 741-5346
TTY (530) 741-4509



*Flex your power!
Be energy efficient!*

August 17, 2007

07BUT0033
03BUT162, 70
Oroville Re-licensing FERC Project 2100
SCH 2001102011

Mr. Henry "Rick" Ramirez, Program Manager
California Department of Water Resources
PO Box 942836
Sacramento, CA 94236

Dear Mr. Ramirez,

Thank you for the opportunity to review and provide comments regarding the Draft Environmental Impact Report (DEIR) for the Oroville Re-licensing FERC Project No. 2100. The re-licensing proposal is for the operation of State Water Project (SWP) facilities in Oroville for 50 years. Among the topics addressed in the report are non-motorized shoreline access, recreational use opportunities and transportation infrastructure. Our comments are as follows:

6.2.10.2 (pg. 6-2-57) Cumulative Effects of the Project Alternatives and Future Related Action

Future Traffic Growth

- Some traffic forecasts in Table 6.2-4 (pg. 6.2-58) are low. Our forecasts volumes are in the table below. Please revise projected Year 2025 LOS.

Route	From PM	To PM	2006 AADT	Caltrans 2025 AADT	2025 AADT From Chap 6.0 Table 6.2-4
SR 99	30.40	30.60	34,000	61,200	48,000
	30.60	31.50	52,000	85,800	64,000
	31.50	32.45	72,000	118,800	86,000
	32.45	34.25	62,000	111,600	92,000
SR 162	15.83	17.55	30,500	50,300	42,500
	17.55	18.01	29,000	47,900	35,000

"Caltrans improves mobility across California"

2007 AUG 17 AM 11:37

S0005-1

Mr. Henry "Rick" Ramirez, Program Manager
August 17, 2007
Page 2

Please send us a copy of the Final EIR and all project applications and environmental documents for specific recreational projects for our review and comment when they become available.

If you have any questions regarding these comments, please contact Matt Friedman, Local Development/Inter-Governmental Review Coordinator, at (530) 741-4004.

Sincerely,

Rick Helman for

SUKHVINDER (SUE) TAKHAR, CHIEF
Office of Transportation Planning-North

2007 AUG 17 AM 11:37

"Caltrans improves mobility across California"

**RESPONSE TO COMMENT FROM THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION**

Response S0005-1:

DWR appreciates the data provided relative to traffic volume forecasts for Year 2025. Table 6.2-4 and the discussion of future traffic growth provided in Section 6.2.10.2 of the DEIR have been revised to incorporate the clarification provided by the commenter. Please see Chapter 2.0 of this FEIR for specific revisions. The statement provided on page 6.2-58 of the DEIR that "... background traffic growth on the regional circulation system is projected to result in LOS F conditions at many locations SR 70, SR 99 and SR 162" remains accurate and the impact conclusions reached in the DEIR remain unchanged.

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**COMMENT FROM THE GOVERNOR'S OFFICE OF PLANNING AND RESEARCH,
STATE CLEARINGHOUSE**



ARNOLD SCHWARZENEGGER
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT



CYNTHIA BRYANT
DIRECTOR

August 22, 2007

Henry "Rick" Ramirez
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Subject: Oroville Facilities Relicensing FERC Project No. 2100
SCH#: 2001102011

Dear Henry "Rick" Ramirez:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on August 20, 2007, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

A handwritten signature in cursive script that reads "Terry Roberts".

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

2007 AUG 23 PM 1:52

S0006-1

S0007

Document Details Report
State Clearinghouse Data Base

SCH# 2001102011
Project Title Oroville Facilities Relicensing FERC Project No. 2100
Lead Agency Water Resources, Department of

Type EIR Draft EIR
Description The Oroville Facilities, as part of SWP, are also operated for flood management, power generation, water quality improvement in the Sacramento-San Joaquin Delta, recreation, and fish and wildlife enhancement. The objective of the proposed project is the continued operation and maintenance of the Oroville Facilities for electric power generation, along with implementation of any terms and conditions to be considered for inclusion in a new FERC hydroelectric license. The initial FERC license for the Oroville Facilities, issued on February 11, 1957, expired on January 31, 2007. The Oroville Facilities are currently operating under an annual license issued by FERC effective February 1, 2007.

Lead Agency Contact

Name Henry "Rick" Ramirez
Agency California Department of Water Resources
Phone (916) 657-4963 **Fax**
email
Address P.O. Box 942836
City Sacramento **State** CA **Zip** 94236

Project Location

County Butte
City Oroville
Region

Cross Streets

Parcel No.

Township 18-22N **Range** 2E-6E **Section** **Base**

Proximity to:

Highways 70, 162, 99
Airports Oroville Municipal
Railways Western Pacific
Waterways Feather River, Lake Oroville
Schools
Land Use Three primary land use designations in the project area include Public Grazing and Open Land, and Timber Mountain land use.

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Cumulative Effects; Economics/Jobs; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Growth Inducing; Landuse; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

Reviewing Agencies Caltrans, Division of Aeronautics; Caltrans, District 3; California Highway Patrol; California Energy Commission; Department of Fish and Game, Region 2; Office of Historic Preservation; Native American Heritage Commission; Department of Parks and Recreation; Public Utilities Commission; Regional Water Quality Control Bd., Region 5 (Redding); Resources Agency; State Lands Commission; State Water Resources Control Board, Clean Water Program; Department of Toxic Substances Control; Department of Water Resources

Date Received 05/21/2007 **Start of Review** 05/21/2007 **End of Review** 08/20/2007

Note: Blanks in data fields result from insufficient information provided by lead agency.

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

1415 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



June 4, 2007

Henry "Rick" Ramirez
California Department of Water Resources
Post Office Box 942836
Sacramento, California 94236

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8/20/07
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Oroville Facilities Relicensing FERC Project No. 2100
State Clearinghouse (SCH) Number: 2001102011

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

Christopher Huitt
Staff Environmental Scientist
Floodway Protection Section

✓cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 942360001
(916) 653-5791



June 20, 2007

Henry "Rick" Ramirez
California Department of Water Resources
Post Office Box 942836
Sacramento, California 95236



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8/20/07
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Oroville Facilities Relicensing FERC Project No. 2100
State Clearinghouse (SCH) Number: 2001102011

The project corresponding to the subject SCH identification number has come to our attention. The limited project description suggests your project may be an encroachment on the State Adopted Plan of Flood Control. You may refer to the California Code of Regulations, Title 23 and Designated Floodway maps at <http://recbd.ca.gov/>. Please be advised that your county office also has copies of the Board's designated floodways for your review. If indeed your project encroaches on an adopted food control plan, you will need to obtain an encroachment permit from the Reclamation Board prior to initiating any activities. The attached Fact Sheet explains the permitting process. Please note that the permitting process may take as much as 45 to 60 days to process. Also note that a condition of the permit requires the securing all of the appropriate additional permits before initiating work. This information is provided so that you may plan accordingly.

If after careful evaluation, it is your assessment that your project is not within the authority of the Reclamation Board, you may disregard this notice. For further information, please contact me at (916) 574-1249.

Sincerely,

A handwritten signature in black ink, appearing to read 'CH Huitt'.

Christopher Huitt
Staff Environmental Scientist
Floodway Protection Section

✓cc: Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

DISTRICT 3

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P. O. BOX 911

MARYSVILLE, CA 95901-0911

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August 17, 2007

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Oroville Re-licensing FERC Project 2100

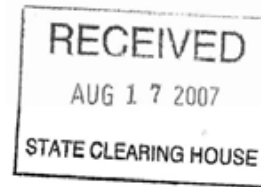
SCH 2001102011

Mr. Henry "Rick" Ramirez, Program Manager

California Department of Water Resources

PO Box 942836

Sacramento, CA 94236



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Dear Mr. Ramirez,

Thank you for the opportunity to review and provide comments regarding the Draft Environmental Impact Report (DEIR) for the Oroville Re-licensing FERC Project No. 2100. The re-licensing proposal is for the operation of State Water Project (SWP) facilities in Oroville for 50 years. Among the topics addressed in the report are non-motorized shoreline access, recreational use opportunities and transportation infrastructure. Our comments are as follows:

6.2.10.2 (pg. 6-2-57) Cumulative Effects of the Project Alternatives and Future Related Action

Future Traffic Growth

- Some traffic forecasts in Table 6.2-4 (pg. 6.2-58) are low. Our forecasts volumes are in the table below. Please revise projected Year 2025 LOS.

Route	From PM	To PM	2006 AADT	Caltrans 2025 AADT	2025 AADT From Chap 6.0 Table 6.2-4
SR 99	30.40	30.60	34,000	61,200	48,000
	30.60	31.50	52,000	85,800	64,000
	31.50	32.45	72,000	118,800	86,000
	32.45	34.25	62,000	111,600	92,000
SR 162	15.83	17.55	30,500	50,300	42,500
	17.55	18.01	29,000	47,900	35,000

"Caltrans improves mobility across California"

Mr. Henry "Rick" Ramirez, Program Manager
August 17, 2007
Page 2

Please send us a copy of the Final EIR and all project applications and environmental documents for specific recreational projects for our review and comment when they become available.

If you have any questions regarding these comments, please contact Matt Friedman, Local Development/Inter-Governmental Review Coordinator, at (530) 741-4004.

Sincerely,

A handwritten signature in cursive script that reads "Rick Helman for".

SUKHVINDER (SUE) TAKHAR, CHIEF
Office of Transportation Planning-North

"Caltrans improves mobility across California"

**RESPONSE TO COMMENT FROM THE GOVERNOR'S OFFICE OF PLANNING
AND RESEARCH, STATE CLEARINGHOUSE**

Response S0006-1:

Comment noted. DWR appreciates the assistance provided by the State Clearinghouse and the acknowledgement that DWR has complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to CEQA.

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COMMENTS FROM THE STATE WATER RESOURCES CONTROL BOARD



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • 916.341.5300
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Arnold Schwarzenegger
Governor

August 31, 2007

Henry M. Ramirez
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 Ninth Street, Room 1155
Sacramento, California 95814

Dear Mr. Ramirez:

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE OROVILLE FACILITIES, FERC # 2100

The Department of Water Resources (DWR) issued a Draft Environmental Impact Report (DEIR) for the Oroville Facilities (Project) in May of 2007. The DEIR analyzes the *Settlement Agreement for Licensing of the Oroville Facilities Project #2100* (Settlement Agreement) filed by DWR with the Federal Energy Regulatory Commission (Commission or FERC). The Settlement Agreement is the Proposed Project in the DEIR. The DEIR includes three alternatives, the No-Project alternative, the Proposed Project, and a FERC Staff alternative from the Environmental Impact Statement.

DWR must obtain water quality certification from the State Water Resources Control Board (State Water Board) before FERC may license the Project. Issuance of the water quality certification by the State Water Board is a discretionary action under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et. seq.) For this project DWR is the lead agency and the State Water Board is a responsible agency. As a responsible agency under CEQA, the State Water Board must consider whether issuing the water quality certification would have an adverse effect on the environment. State Water Board staff have reviewed the DEIR and are providing comments on both the DEIR and analysis of water quality impacts contained in the DEIR.

Water Quality Certification

Pursuant to the federal Clean Water Act (CWA), section 401 (33 U.S.C. § 1341), any applicant for a federal license or permit to conduct an activity that may result in any discharge to navigable waters must obtain certification from the State in which the discharge originates or will originate that the discharge will comply with the applicable provisions of the CWA. The State Water Board is the certifying agency in California for water quality certification. (Wat. Code, § 13160.) In issuing a water quality certification, the State Water Board certifies that the project will comply with specified provisions of the CWA, including water quality standards that are developed pursuant to state law and in satisfaction of section 303 of the CWA (33 U.S.C. § 1313). The State Water Board may condition certification to ensure compliance with CWA requirements and any other appropriate requirement of state law. (33 U.S.C. § 1341, subd. (d).) Conditions of certification become conditions of any federal license or permit for the project.

California Environmental Protection Agency



Henry M. Ramirez

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August 31, 2007

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board has adopted, and the State Water Board and U.S. Environmental Protection Agency (USEPA) have approved, the *Water Quality Control Plan for the Sacramento and San Joaquin Rivers* (Basin Plan) (Central Valley Regional Water Quality Control Board, 1998). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses. California water quality standards consist of both beneficial uses and the water quality objectives based on those uses. Beneficial uses designated for Lake Oroville include municipal and domestic supply, irrigation, power generation, contact and non-contact recreation, freshwater habitat (cold and warm), spawning habitat (cold and warm), and wildlife habitat. Beneficial uses for the Feather River from the fish barrier dam to the Sacramento River are municipal and domestic supply, irrigation, contact and non-contact recreation, canoeing and rafting, migration (cold and warm), freshwater habitat (cold and warm), spawning habitat (cold and warm), and wildlife habitat.

The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. DWR must demonstrate whether the Project complies with all applicable water quality objectives in the Basin Plan and whether the Project impairs the established beneficial uses of the Feather River or Lake Oroville. DWR must evaluate its Project for compliance with all water quality objectives in the Basin Plan, as well as other applicable objectives and criteria such as those included in the California Toxics Rule (CTR), the Department of Health Services' Maximum Contaminant Levels (MCLs), etc. If the Project does not comply with one or more of the water quality objectives or criteria, then DWR must describe the actions that it will take to bring its Project into compliance with the applicable water quality limits in order to protect and maintain the beneficial uses.

S0007-1

Baseline

CEQA Guidelines section 15125 sets a general rule for determining the baseline for analysis of the environmental impacts of a project. (Cal. Code Regs., tit. 14, § 15125.) Under section 15125, an EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation of the EIR is issued or at the time environmental analysis is commenced. Assuming DWR uses existing conditions as the baseline, it should clearly define the environmental impacts under the different Project alternatives.

S0007-2

DWR states that under the No-Project alternative, the Project would continue to be operated as it is under the existing FERC license. Any differences between existing conditions and continued operation under the existing license (i.e., the No-Project alternative) should be identified. Existing conditions are different from the No-Project alternative because conditions under current operations are different from conditions that could be expected with continued operation under the existing license. Existing conditions represent environmental conditions at a fixed point in time, whereas under the No-Project alternative there will be changes in the environment. The No-Project alternative should be compared to existing conditions and the other alternatives in order to show what will happen if the proposed action is not taken. The DEIS should use existing conditions as the baseline and clearly define the No-Project alternative and describe the baseline (i.e., a point in time) in the DEIR.

S0007-3

Henry M. Ramirez

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August 31, 2007

For example, the genetic condition of spring run Chinook salmon under the existing conditions and the No-Project alternative are different. Construction of the Project has restricted the spatial separation of spring and fall run Chinook salmon. The reduction in spawning habitat has increased the rate of redd superimposition, which has impacted spring run salmon that spawn a few weeks prior to fall run. In addition, the Feather River Fish Hatchery has not separated spring and fall run fish when collecting eggs. This has resulted in introgression (genetic interbreeding) at a very high rate. Continued mixing of spring and fall run fish under the No-Project alternative will result in ongoing introgression and greater impacts than currently exist.

S0007-4

The DEIR also fails to adequately disclose the baseline condition of the anadromous fishery. The DEIR states that Feather River water temperatures generally comply with the numeric water quality criteria established for the Feather River Hatchery and Robinson Riffle (page 4.4-22). This statement is contrary to the conclusion on page 4.4-20 that the water temperature regime associated with the baseline operations of the Project may expose pre-spawning adult salmonids to elevated water temperature. Construction and operation of the Project has blocked access to important holding, spawning and rearing habitat upstream of the Project. Anadromous fish are restricted to less than optimum habitat below the fish barrier dam. Studies have shown it is unlikely that adult Chinook salmon can use the Feather River below the Thermalito Afterbay Outlet except as a migration corridor (Department of Water Resources, 2004). Water temperature monitoring in 2002 and 2003 showed that the temperature of water released from Thermalito Afterbay was as much as 11.3°F higher than that of incoming water (Department of Water Resources, 2005). DWR concluded that increased incidence of disease, developmental abnormalities, increased in-vivo egg mortality, and temporary cessation of migration could occur due to elevated water temperatures in some areas of the lower Feather River (Department of Water Resources, 2004). Again, looking forward, the No-Project alternative is likely to have impacts beyond those observed in the baseline.

S0007-5

S0007-6

S0007-7

The DEIR fails to disclose the baseline condition for water temperature impacts to rice production, or the impacts to beneficial uses. The DEIR (page 4.2-26) only states, "The project-related water temperature concern for agricultural users is the temperature of the water diverted from Thermalito Afterbay during the early part of the rice growing season..." This is followed by a statement that DWR has entered into a contract for the delivery of water to agricultural users and the concerns are discussed and resolved in the agreement. It is not clear if the agreement is considered to be part of the baseline physical condition. The DEIR also states that "areas in the rice fields that are affected by delivery water temperatures are localized to the areas of the field immediately adjacent to the field water inlet." Data must be provided to support this statement and quantify the reduction in crop yield from reduced water temperature.

S0007-8

S0007-9

S0007-10

Level of Analysis

The DEIR states that it evaluates actions at both the program level and project level of impact analysis (page 5.0-1). The DEIR also states these future actions require further development and study, and will require additional environmental analysis (page 5.0-2). The environmental document for the Proposed Project must include complete discussion of all measures that will be required to obtain a new license from the Commission, including but not limited to those measures in the Settlement Agreement for improvement of water temperature to protect anadromous fish and rice production. The DEIR should also evaluate the impacts arising from construction and operation of temperature control facilities required in the settlement agreement and for compliance with the Basin Plan.

S0007-11

Henry M. Ramirez

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August 31, 2007

Water Quality Standards Analysis

The DEIR confuses CEQA impacts with impacts to the water quality standards in the Basin Plan. These analyses should be separated. Under CEQA, a project must be analyzed for its incremental effects over existing baseline conditions. In an analysis of an existing hydroelectric project, reauthorizing the project will not yield many environmental impacts because most of the impacts have already occurred and, when compared to the existing condition, do not register as significant. Thus, most of the potentially significant impacts identified in the CEQA analysis will be associated with the proposed measures. Because CEQA allows the current conditions to be used as the baseline for impacts analysis, it does not provide an evaluation of beneficial uses under the existing conditions. Before water quality certification can be issued, and in addition to CEQA, DWR must demonstrate that it can comply with the water quality standards and protect the beneficial uses. Analysis of compliance with the Basin Plan requires a different baseline than employed under CEQA. This analysis is separate from CEQA.

S0007-12

For example, Chapter 4 of the DEIR contains a description of certain water quality objectives and the beneficial uses that are supported by the objectives. Included in this description is the current level of bacteria present in swimming areas. However, the impact of the bacteria levels on the beneficial uses is not adequately described (page 4.2-41). DWR conducted monitoring for bacteria at recreation areas during 2002 and 2003. Samples from the North Forebay Recreation Area beach had consistently high fecal coliform levels that exceeded Department of Health Services (DHS) guidance and Basin Plan objectives. Results also showed that nearly every sample from two sites in the North Forebay, and many sites in the South Forebay, exceeded DHS and USEPA criteria for enterococcus bacteria (Department of Water Resources, September 2004). The impacts on beneficial uses that may already be impaired by the high levels of bacteria will need to be analyzed before the State Water Board can issue certification.

S0007-13

The DEIR concludes on page 4.4-20 that the water temperature regime associated with the baseline operations of the Project may expose pre-spawning adult salmonids to elevated water temperature. DWR concluded that increased incidence of disease, developmental abnormalities, increased in-vivo egg mortality, and temporary cessation of migration could occur due to elevated water temperatures in some areas of the lower Feather River (Department of Water Resources, 2004). While this itself is not an impact that needs to be analyzed in the DEIR, it results in additional future harm to fish under the No-Project alternative. This harm should be analyzed. Also, impairment to the beneficial uses will need to be further addressed in the application for water quality certification.

S0007-14

The environmental impacts chapter contains an analysis of the Proposed Project with regard to the beneficial uses designated in the Basin Plan. The DEIR states that the CEQA Proposed Project specifically protects and enhances beneficial uses of cold water habitat, migration, and spawning identified in the Basin Plan (page 5.2-12). Information to support this statement is not provided in the DEIR. While in general, the Proposed Project includes measures that will reduce water temperature, until the measures are fully developed and modeled, it is impossible to determine the exact reduction in water temperature that will be achieved. The DEIR does not correctly interpret many of the beneficial uses and the impact of the Proposed Project on the beneficial uses. Both the quality of water and the quantity of water necessary to meet the water quality objectives must be considered. In much of the evaluation only quantity or quality was considered. The analysis is not adequate for use by State Water Board staff in assessing the

S0007-15

S0007-16

Henry M. Ramirez

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August 31, 2007

environmental impacts of the Project alternatives or evaluating compliance with the water quality standards.

S0007-16
cont

The combined CEQA and Basin Plan analysis in the DEIR is confusing and does not provide a sufficient analysis of impacts to water quality standards. State Water Board staff recommend that the description of the Proposed Project in the FEIR include a distinct analysis of Basin Plan compliance. This analysis should consider the ability of the Proposed Project to protect the beneficial uses.

S0007-17

Specific Comments on Environmental Impacts

The Proposed Project includes flow/temperature actions and potential future facility modifications to further enhance water temperature management for coldwater species (page 5.4-15). Potential impacts on aquatic resources from long-term actions are evaluated at a programmatic level because the actions do not have a sufficient level of detail to support a complete analysis. Therefore, any attempt to determine the impacts of these actions is speculative. A DEIR must clearly identify the direct and indirect impacts in both the short and long term.

S0007-18

Impacts of reduced water temperature on rice production are included in the section on farmland and agricultural uses. State Water Board staff believe these impacts should also be acknowledged to have water quality effects. The DEIR concludes that a reduction of water temperature from the Proposed Project will not be "expected to substantially increase rice yield loss" (page 5.13-6). Page 5.2-16 contains a conflicting statement that the "exact nature of potential agricultural impacts associated with future potential facility modifications are unknown." Data should be included that allow for disclosure of the impacts of temperature modifications on rice production. Without data to quantify the reduction in rice yield, it is not possible to determine the level of impact. The DEIR (page 4.2-26) states that DWR has entered into a contract for the delivery of water to agricultural users and that temperature concerns are discussed and resolved in the agreement. If the agreement is considered to be mitigation for the impacts of reduced water temperature on rice production, the details of the agreement should be provided.

S0007-19

S0007-20

S0007-21

The settlement agreement includes the construction of two fish barrier weirs. The DEIR concludes that "construction of the two weirs would likely cause short-term impacts on recreation; however, the level of impact cannot be identified without further details on weir construction" (page 5.7-16). Despite this uncertainty, the impact on boating and fishing from the weir is identified as less-than-significant. Additional supporting data should be provided to support this conclusion.

S0007-22

The DEIR does not include an adequate discussion of the impact of State Water Project (SWP) operations on the Proposed Project. The DEIR discloses that demands for SWP water are expected to rise as the population of California increases, but concludes that changes to net facility releases would have the same effect on all of the alternatives. This may be true, but the change could result in significant impacts when compared to existing conditions. Increase in the quantity or timing of water deliveries could have an impact on the cold water pool available in Lake Oroville that will be used to protect anadromous fish in the Feather River. In addition, changes in SWP operations, in combination with the Proposed Project, could result in cumulative impacts. Further analysis is required to determine the cumulative impact of the Proposed Project and future SWP operations.

S0007-23

Henry M. Ramirez

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August 31, 2007

Conclusion

As a responsible agency, the State Water Board complies with CEQA by considering the EIR and reaching its own conclusions. (Cal. Code of Regs., tit. 14, §15096.) In the case of water quality certifications, the State Water Board evaluates the impacts of the entire project on water quality, including impacts of continuing current operations, after the FERC license is renewed. (Wat. Code, § 13160.) As discussed above, the EIR must more fully identify the environmental impacts of the Project alternatives.

Thank you for your continued assistance and consultation on this Project. If you have any questions about these comments, you may call me at (916) 341-5341.

Sincerely,

ORIGINAL SIGNED BY

Russ J. Kanz
Staff Environmental Scientist

References:

Central Valley Regional Water Quality Control Board. 1998. Water quality control plan for the Sacramento and San Joaquin River Basins, Forth Edition. September 15, 1998

Department of Water Resources. 2004. Final Report, Evaluation of Oroville facilities operation on water temperature related effects on pre-spawning adult Chinook salmon and characterization of holding habitat SP-F10, tasks 1D and 1E. June 2004

Department of Water Resources. 2005. Application for new license, Oroville Facilities FERC project no. 2100. January 2005

Department of Water Resources. September 2004. Project effects on water quality designated beneficial uses for surface water. September 2004

bcc: Les Grober

RK:llv 7/27/07:jmtipps 08.29.07
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RESPONSES TO COMMENTS FROM THE STATE WATER RESOURCES CONTROL BOARD

Response S0007-1:

As described in Section 5.2.2.1 of the DEIR, DWR evaluated the Proposed Project for compliance with all water quality objectives in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan) as well as other applicable federal, State, and local plans, policies, regulations, and laws. Compliance with water quality standards, including the Basin Plan–designated beneficial uses, was one of the impact thresholds utilized in the DEIR. A lengthy discussion of the existing conditions with regard to beneficial uses is included in Section 4.2.2.1 of the DEIR. Table 4.2-3 in the DEIR contains a description presenting water quality objectives, standards and criteria, including maximum contaminant levels (MCLs). Section 5.2.2.5 of the DEIR evaluates compliance with all Basin Plan beneficial uses and water quality objectives.

DWR is committed to remaining in compliance with the Basin Plan. For example, as described in the Settlement Agreement (SA), Article A112 is an expanded water quality monitoring and reporting program, and two articles (SA Articles A113 and A114) were developed and incorporated into the SA to address the potential increased number of recreationists exposed to health risks associated with the use of expanded recreation facilities. Recreation use within the FERC Project boundary is expected to increase the number of individuals exposed to two potential health risks: (1) coliform bacteria in isolated swimming areas where waterfowl and recreation use occurs; and (2) consumption of fish containing elevated levels of mercury. Water quality standards and closure actions at freshwater swim areas are typically the jurisdiction of the respective county health departments, and subject to change. At this time, and in the foreseeable future, no beach closures are anticipated. From experience in other areas, county-imposed closures are typically brief and localized; therefore, there is usually no requirement for mitigation. The proposed, extensive water quality monitoring program, adequately discussed in the DEIR, is expected to be sufficient to allow proper management action by the appropriate agencies in the event of changing bacteria levels at swim beaches. SA Article A113 includes education and notification to the public regarding the potential exposure to coliform bacteria associated with swimming in areas also frequented by waterfowl. The Recreation Management Plan (RMP) includes a swimming feasibility study designed to identify the most appropriate location for construction of a warm water swim facility that could serve recreationists during short-term closures of swim areas, should it be necessary. SA Article 114 includes education and notification of fish consumption advisories released by the State Office of Environmental Health Hazard Assessment. Thus, implementation of either the Proposed Project or the FERC Staff Alternative includes measures to mitigate to less-than-significant levels the effects of increased recreational use, and thereby exposure, by increasing public awareness through a signage program and information distribution activities to educate the public on bacteria exposure avoidance and safe limits on the consumption of fish.

Response S0007-2:

Section 15125 of the State CEQA Guidelines describes the physical environmental conditions as they exist at the time the Notice of Preparation (NOP) is published as normally constituting the baseline physical conditions by which a lead agency determines whether an impact is significant. As described in Chapter 4.0, Environmental Setting, of the DEIR, baseline was established with the publication of the NOP in 2001. The existence of the Oroville Facilities is part of the baseline environmental condition. CEQA requires that an EIR discuss the significant environmental effects of the Proposed Project when compared to the Existing Conditions (i.e., baseline). The DEIR appropriately discusses the environmental impacts under the different Project alternatives in Chapter 5.0.

Response S0007-3:

The DEIR evaluates the change from Existing Conditions to the future No-Project conditions in Chapter 5.0 for each resource category. The baseline for Existing Conditions for comparisons of alternatives in the DEIR was 2001, consistent with the CEQA and National Environmental Policy Act (NEPA) scoping document time frame, and was the same period used for the Preliminary Draft Environmental Assessment (PDEA) accompanying the FERC License Application. The No-Project Alternative was evaluated at a future time frame, in 2020, reflecting the fact that existing conditions will change in the future. Section 15125 of the State CEQA Guidelines describes the physical environmental conditions, as they exist at the time the NOP is published, as normally constituting the baseline physical conditions by which a lead agency determines whether an impact is significant. As described in Chapter 4.0, Environmental Setting, of the DEIR, baseline was established with the publication of the NOP in 2001. The existence of the Oroville Facilities is part of the baseline environmental condition. CEQA requires that an EIR discuss the significant environmental effects of the Proposed Project when compared to the Existing Conditions (i.e., baseline). Please refer to Table 5.16-1 in the DEIR (provided in Chapter 1.0 of this FEIR as Table 1.5-1) for a comparison between alternatives.

Response S0007-4:

The No-Project impact description in the DEIR, Section 5.4, page 19, has been amended to include the ongoing incremental effects of spring- and fall-run Chinook salmon genetic introgression. Specifically, the No-Project Alternative includes recent changes in hatchery operations that are reducing genetic interbreeding in the hatchery. Please see Chapter 2.0 of this FEIR for revisions to DEIR text. In addition, the DEIR contains additional description of the No-Project vs. Existing Condition effects in Appendix C2. Discussion of the introgression effects of the No-Project Alternative as compared to the Existing Condition is included in Sections C2.1.1 and C2.4.5 of Appendix C2 of the DEIR.

Response S0007-5:

Section 4.4 of the DEIR adequately describes the baseline condition for the anadromous fishery. In general, the project is in compliance with both the Robinson Riffle and lower Feather River Fish Hatchery water temperature requirements as stated in the 1983 agreement. The effects of water temperatures on spring-run Chinook salmon holding and Chinook salmon pre-spawning conditions in the lower Feather River were presented in Relicensing Study Plan Report F10 (SP-F10, Task 1E), as referenced in the PDEA. The F10 Task 1E study evaluates water temperature effects on the immigration and holding pre-spawning life stage period of Chinook salmon.

Currently, anadromous salmonids have access to the lower 67 miles of the lower Feather River; from the Fish Barrier Dam at RM 67 to the confluence with the Sacramento River at RM 0. The water temperature compliance point is located at Robinson Riffle at RM 62. Pre-spawning adult salmonids may indeed be exposed to warm water temperatures in the lower portion of the River as water moves downstream. Water temperatures from the Fish Barrier Dam at RM 67 downstream to the Thermalito Afterbay Outlet at RM 59 (Low Flow Channel) are dominated by coldwater releases from Oroville Dam. Warmer water enters the Feather River at the Thermalito Afterbay outlet. The Yuba River enters the Feather River at RM 28 and from that point downstream to the confluence with the Sacramento River, project effects on water temperature would be insignificant. It is likely that water temperatures from the Yuba River downstream to the confluence with the Sacramento River mimic historic conditions and that this reach of the river was never utilized as other than a migratory corridor, particularly for spring-run Chinook salmon.

Response S0007-6:

The State Water Resources Control Board's (SWRCB's) comment refers to the fisheries technical report SP-F10, Task 1E, on Chinook salmon immigration, holding, and pre-spawning effects. The SWRCB's perception of the conclusions of the report appears to be a misunderstanding that the lower Feather River below the Thermalito Afterbay Outlet "is a migratory corridor" for this fish species life stage. The DEIR, Section 4.4.1.1, includes a description of salmonid habitat use and distribution in the Feather River below the Thermalito Afterbay Outlet. Additional information is provided in Appendix C of the DEIR. In fact, it has been documented that the Thermalito Afterbay Outlet is heavily utilized by salmonids during their adult in-river holding life stage. In addition to the use of the lower Feather River below the Thermalito Afterbay Outlet as habitat for immigration and holding (as reported in both the SP-F10, Task 1D and Task 1E reports), other life stages of salmonids are also documented using habitat below the Thermalito Afterbay Outlet, including over one-third of Chinook salmon spawning activity (SP-F10, Task 2B reports), steelhead juvenile rearing (SP-F10, Task 3B and Task 3C reports), and juvenile salmonid emigration (SP-F10, Task 4A report).

Response S0007-7:

Please see Response to Comment S0007-2 above.

Response S0007-8:

The DEIR discloses the baseline condition for water temperature effects on rice production in numerous locations. In fact, it contains an extensive discussion of water temperatures related to irrigated agriculture beneficial uses, irrigation water temperature effects on rice, as well as a description of the existing conditions. The DEIR addresses the environmental baseline water temperature effects on rice production and irrigated agriculture beneficial uses in the following locations:

- Section 4.2.2.2 shows existing condition water temperatures at the agricultural diversions and discusses operational and other environmental variables that affect irrigation diversion water temperatures.
- Sections 4.13.1 and 4.13.4 discuss current water temperatures at the agricultural diversions in relationship to reported water temperature physiological responses in rice. These sections also describe the general distribution of cold water effects both within a field and in the Feather River Service Area (FRSA).
- Section 5.13 presents information on the qualitative analysis method and conclusions for the effects of the No-Project Alternative, Proposed Project, and FERC Staff Alternative on water temperatures and rice production.
- Section 6.2.11 discusses cumulative effects of water temperatures on rice production, from both past, present, and future related actions.

Since the best available science does not support quantifying the potential effects on rice yields, all of the discussion in the DEIR of current, past, and future effects of water temperatures on rice production is qualitative. Available published literature and studies conducted for DWR to investigate water temperature effects on rice describe those effects at a given location in a field, but the available materials do not support the quantification of the overall effect using the best available science. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and Rice Yields, for additional information relevant to this comment.

Response S0007-9:

Existing contractual agreements referred to in the DEIR are considered part of the baseline condition. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and Rice Yields, for additional information relevant to this comment.

Response S0007-10:

The word “immediately” was used to convey the spatial relationship of cold water losses with respect to adjacency of the effect to the location of the inlet. Another description of the nature and distribution of the cold water effect within a field is included in the DEIR in Section 4.13.4, which states that “Effects of cold water on rice yield tend to be

localized near the field irrigation inlet, although effects have been observed in adjacent checks where cold water has seeped through the dividing levee (Mutters et al. 2003b)."

There is currently no way to reliably quantify the specific rice yield loss to cold water temperatures attributable to the Proposed Project as compared to baseline conditions. A University of California, Davis, study conducted in 2005 (*Spatial Distribution of Water Temperature Affects on Rice Productivity* [Mutters 2007]) indicated that based on the average of six experimental fields, effects from cold water resulted in less than a 2 percent overall yield loss. This loss was inclusive of all impacts associated with cold water exposure and did not differentiate cold water effects directly related to the Oroville Facilities. The 2005 study was of limited value in quantifying reduction of rice yields related to the Proposed Project for the following reasons: (1) the study used inadequate sample size and geographic distribution not representative of the entire range of conditions throughout the districts; (2) the study included only 1 year of data, which does not represent variable conditions that could change from year to year; and (3) the study may be susceptible to substantial error in estimating overall yields by extrapolating results from a single check to determine overall field yields. Nonetheless, this estimate is provided in response to the SWRCB question for a quantification of the cold water effect. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and Rice Yields, for information relevant to this comment.

Response S0007-11:

The SA does not require the construction of any facility modifications for temperature control. In fact, the Proposed Project and the FERC Staff Alternative would continue to meet all Basin Plan beneficial uses even without additional physical facilities modifications or operational changes. However, in Article A108 the SA does contain language describing a feasibility study designed to investigate whether any facility modifications could be constructed that would further enhance water temperatures for anadromous fish. As described in the DEIR, Section 3.3.2.1, page 3.3-6, future project modifications that may be implemented to further enhance the environment beyond what is afforded in the Proposed Project would "...require further evaluation and development into feasible alternatives before specific environmental effects can be analyzed."

Response S0007-12:

The DEIR in Section 5.2.2.2 uses the water quality standards in the Basin Plan as a significance threshold to analyze potential violations from each of the alternatives to any water quality standards or waste discharge requirements. The analysis of Basin Plan standards compliance is discussed in the DEIR, Section 5.2.2.5, and concluded that the Proposed Project will continue to comply with the water quality standards and protect the beneficial uses. The summary of the CEQA impact analysis is presented in Section 5.2.2.6. The Existing Condition Basin Plan compliance is discussed separately in Section 4.2.2.1 of the DEIR.

DWR is aware that the SWRCB may request additional analysis, outside of the CEQA process, prior to issuing a 401 water quality certification for the FERC license. DWR will continue to work with the SWRCB to satisfy its informational needs specific to the 401 certification process.

As noted in Section 5.2.2.7, current facility operations are reasonably protective of Basin Plan objectives and include standard best management practices (BMPs) to protect water quality (see Appendix D of the DEIR for detailed descriptions of BMPs). Because DWR would implement activity-specific BMPs as appropriate for any future improvements made to the Project under any of the alternatives, impacts would remain at less-than-significant levels. Any future modifications proposed would be subject to more detailed environmental analysis when more detailed design and operational characteristics are defined and appropriate impact mitigation measures incorporated into the plans.

Furthermore, under the Proposed Project, future facilities development included in the RMP are expected to increase recreation activities. As noted in the DEIR, Section 5.2.2.7, the Proposed Project may increase recreational use, which may in turn increase exposure to bacteria in Project waters. Wildlife, including migratory waterfowl, remains the primary source of bacteria in water-based recreation areas and there is no effective mitigation to lower the bacterial input that would not adversely affect the wildlife, which is also a beneficial use. The impacts on recreational beneficial uses are considered less than significant due to the inclusion in the Proposed Project of SA Article A113, which would develop a monitoring and public education program related to bacteria, contact recreation, and public noticing of conditions.

Response S0007-13:

Please see Response to Comment S0007-12.

Response S0007-14:

DWR will appropriately address beneficial uses in its 401 water quality certification application for the Proposed Project.

Response S0007-15:

The SA does not require the construction of any facility modifications for temperature control. In fact, the Proposed Project and the FERC Staff Alternative would continue to meet all Basin Plan beneficial uses even without additional physical facilities modifications or operational changes. However, in Article A108 the SA does contain language describing a feasibility study designed to investigate whether any modifications could be constructed that would further enhance water temperatures for anadromous fish at the Project. As described in the DEIR, Section 3.3.2.1, page 3.3-5, future Project modifications that may be implemented to further enhance the environment beyond what is afforded in the Proposed Project would "...require further evaluation and development into feasible alternatives before specific environmental effects can be analyzed."

Please see supporting analysis and water temperature text in the DEIR, Section 5.2.2.5 and Appendix C3.1.7, from page 8 through page 11 for aquatic resources analysis. In addition, the extensive amount of very targeted operation modeling studies that were performed by DWR to support both the PDEA for the FERC License application and the CEQA DEIR concluded that water temperatures in the Feather River below Oroville Dam would be reduced over baseline, thereby enhancing cold water beneficial uses afforded under the current FERC licensed Project, which already meets Basin Plan objectives.

Response S0007-16:

The DEIR addressed both water quantity and quality in the assessment of beneficial uses and the compliance with the Basin Plan. Compliance with water quality standards, including the Basin Plan designated beneficial uses for both water quality and quantity, was one of the impact thresholds utilized in the DEIR evaluation of water quality (see DEIR Sections 4.2.1 and 4.2.2 for Existing Conditions, and Sections 5.2.1 and 5.2.2 for impact analysis). The DEIR concludes that the Proposed Project meets the beneficial uses and the Basin Plan numeric and qualitative objectives for both water quality and quantity. When water quantity and quality aspects of beneficial use and compliance with the Basin Plan are considered in combination, the Proposed Project would continue to meet the Basin Plan objectives.

Response S0007-17:

The DEIR evaluated both the baseline and the Proposed Project compliance with the Basin Plan–designated beneficial uses. Compliance with water quality standards, including the Basin Plan–designated beneficial uses, was one of the impact thresholds utilized in the DEIR evaluation of water quality. Please see DEIR Sections 4.2.2, 4.13, 5.2.2.5, and 5.13.

DWR is aware that the SWRCB may request additional analysis that is outside the CEQA process prior to issuing a Section 401 water quality certification for the FERC license. DWR will continue to work with the SWRCB to satisfy its informational needs specific to the Section 401 certification process.

Response S0007-18:

The SA does not require the construction of any facility modifications for temperature control. In fact, the Proposed Project and the FERC Staff Alternative would continue to meet all Basin Plan beneficial uses even without additional physical facilities modifications or operational changes. However, in Article A108 the SA does contain language describing a feasibility study designed to investigate whether any modifications could be constructed that would further enhance water temperatures for anadromous fish at the Project. As described in the DEIR, Section 3.3.2.1, page 3.3-5, if a decision is made to implement future project modifications to further enhance the environment beyond what is afforded in the Proposed Project, those modifications

would require further evaluation and development into feasible alternatives before specific direct and indirect impacts in both the short and long term can be analyzed.

The DEIR fully discloses what is currently known about the Project and evaluates the potential impacts on resources. Since sufficient detail to conduct a project-level analysis on the proposed facilities modifications will not be available until at least 3 years after the FERC license is accepted, a programmatic analysis was conducted to fully disclose what is currently known about the nature and potential general effects of these proposed facilities modifications. As stated in DEIR Section 3.3.2.1, page 3.3-6, prior to implementation, any future facilities modifications will be subject to more detailed environmental analysis when more detailed design and operational characteristics are defined.

Response S0007-19:

The conclusions presented in DEIR, Section 5.13, regarding water temperature change effects on rice production are based on analysis of water temperature change presented in Section 5.2.2, pages 5.2-12 through 5.2-18 of the DEIR. The DEIR analysis of water temperature changes with implementation of the Proposed Project related to irrigated agriculture Basin Plan beneficial uses is presented in the DEIR on page 5.2-15. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and Rice Yields, for additional information relevant to this comment.

Response S0007-20:

The qualitative statement that yield losses are not expected to increase is not in conflict with the statement that the exact nature of impacts on agriculture from future facilities modifications cannot be determined until more specific location, design, and operational characteristics of the potential facilities modifications are defined. As described in Section 5.0.1 and in Section 5.2.2.5 of the DEIR, the potential temperature modification alternatives were appropriately analyzed on a programmatic level. The programmatic analysis concluded that the general nature of the potential effects, either positive or negative, can be reliably determined and is therefore appropriate to disclose. However, until specific information is developed and the feasibility study is completed, it is not possible to quantify the change as suggested by the commenter. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and Rice Yields, for additional information relevant to this comment.

Response S0007-21:

The DEIR, page 4.2-26, describes two existing water delivery contracts (diversion agreements) between DWR and Joint Water Districts and between DWR and Pacific Gas and Electric Company (superseded by Western Canal Water District 1986). These contracts are not considered to be mitigation for any impacts. DWR and the water districts have finalized an agreement to resolve contractual issues pertaining to water temperature. Please see in this FEIR Chapter 3.0, Master Responses, The

Relationship between the Oroville Facilities and Rice Yields, for additional information relevant to this comment.

Response S0007-22:

SA Article A105, Fish Weir Program, is a multi-faceted program that would commence at license acceptance, in consultation with the Ecological Committee, which includes USFWS, NMFS, and DFG. A specific location has not been identified for placement of either of the two fish weirs described in the action. As described in DEIR Section 3.3.2.3, page 3.3-13, "The Proposed Project includes a Fish Weir Program whereby two fish barrier weirs would be installed in phases; the first-phase weir would be used to determine the abundance of phenotypic spring-run and steelhead in the LFC [Low Flow Channel], after which a second weir would be installed that would spatially separate spring-run and fall-run in the LFC to create a dedicated spawning area to protect the spring-run Chinook salmon."

As stated on page 5.7-15 of the DEIR, construction of the two weirs would likely cause short-term impacts on recreation. However, the level of impact cannot be identified without design specifics or construction plans. Given that the Fish Weir Program analysis is programmatic, additional information and permitting would be necessary prior to implementation of this SA article.

The weirs would allow for manually passing boats over the weirs. This would impede, but not prevent, boat passage. It is anticipated that fishing directly upstream and downstream of the weir would be prohibited but this would not result in a significant impact to fishing. SA Article A105 requires a design and safety analysis, including boating compatibility that would identify ways to minimize impacts on boating from the weirs.

Response S0007-23:

Changes in water supply and water quality in the No-Project Alternative as compared to the baseline are presented in Section 5.2 of the DEIR. Effects on the cold water pool volume in the Proposed Project as compared to baseline are the same in the DEIR as in the PDEA because the same assumptions regarding future demand, operations, water temperature requirements, and net facilities flow releases are made in the operations modeling studies conducted for both documents. Analysis of future changes to the State Water Project (SWP) statewide operations is outside the scope of this EIR. However, additional information related to future Operations Criteria and Plan (OCAP) decisions is included in this FEIR. Please see in this FEIR Chapter 3.0, Master Responses, The Relationship between the Oroville Facilities and OCAP, for additional information relevant to this comment.

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